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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/816,016

03/23/2001

Betsy P. Colwell

02200-1

9104

7590

08/28/2006

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/816,016	<b>Applicant(s)</b> COLWELL, BETSY P.	
	<b>Examiner</b> Andrea M. Valenti	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.  
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-5, 7-12, 14-23, 26, 27, 32-36 and 39-49 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1, 3-5, 7-12, 14-23, 26, 27, 32-36 and 39-49 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

The indicated allowability of claims 1, 3-5, 7-12, 14-23, 26, 33-35, 40, 46-49 are withdrawn in view of the newly discovered reference(s) to U.S. Patent No. 5,452,682 to Bescherer et al. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27 recites the limitation "the seed holder" in line 4. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7-12, 14-23, 26, 40, 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over DUNCRAFT, Winter & Holidays 1999 "specialties for Enjoying

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Wild Birds" Penacook, NH, pgs 1-48 in view U.S. Patent No. 5,452,682 to Bescherer et al.

Regarding Claims 1, 7, 12, 17-23, 26, 46-48, DUNCRAFT teaches a selective bird feeder, comprising: a selective housing having at least one sidewall and a base; a seed holder contained within the selective housing and including a base; a space disposed between a sidewall of the seed holder and the at least one sidewall of the selective housing, a fastening member constructed and arranged to removably secure the base of the selective housing to the base of the seed holder; a top adjacent an upper edge of the selective housing (DUNCRAFT item 180M, 181M, 188M, 161M and based on the broadly recited limitation of "fastening member" the examiner maintains that DUNCRAFT in fact teaches this member or else the device of DUNCRAFT would come apart and the bottom would drop down when suspended). DUNCRAFT teaches the base of the selective housing is substantially solid and the top of the selective housing is substantially solid; the removable top directly contacts the seed holder; the seed holder includes a cap and the top directly contacts the cap or the removable top is spaced apart from the seed holder; the top includes an aperture through which a portion of the seed holder extends; a hanger.

DUNCRAFT is silent on said fastening member comprising a threaded plug that is adapted to removably connect, through a substantially centrally disposed aperture in said selective housing base, to the base of said seed holder; wherein, upon removal of the fastening member, the selective housing and the base of the selective housing are disconnected from the seed holder such that a user can remove the selective housing

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and the base of the selective housing from engagement with the base of the seed holder. However, Bescherer teaches bird feeder with a fastening member that is a threaded plug that attaches the base of a seed holder to another base (Bescherer Fig. 4 and #32). It would have been obvious to one of ordinary skill in the art to modify the teachings of DUNCRAFT with the teachings of Bescherer at the time of the invention since the modification is merely the selection of a known alternate means of securing two bird feeder base components together modified for the ease of assembly and disassembly and perch alignment.

Regarding Claims 3, 4, and 5, DUNCRAFT as modified teaches the space, but is silent on explicitly teaching the space is about 1, 1.5, 2 inches. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely a change in size to accommodate desired different sizes and varieties of birds [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claims 9, 10, and 11, DUNCRAFT as modified appears to teach apertures with at least one sidewall of the selective housing including the apertures having maximum dimensions, but is silent on explicitly teaching the maximum dimensions are about 1, 1.5, 2 inches. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely a change in size to accommodate desired different sizes and varieties of birds [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

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Regarding Claim 14, 15, 16, DUNCRAFT as modified teaches the top of the selective housing includes apertures (DUNCRAFT #127), but is silent on them having a maximum dimension of about 1, 1.5, 2 inches. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely a change in size to accommodate desired different sizes and varieties of birds [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 40, DUNCRAFT as modified is silent on explicitly teaching the top is substantially a transparent plastic material. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely the selection of a known material for a desire aesthetic effect to naturally blend with the surroundings and does not present a patentably distinct limitation.

Regarding Claim 8, DUNCRAFT as modified teaches the base of the selective housing includes apertures (DUNCRAFT #127).

Claims 27, 32-36, 39, 41-45, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over DUNCRAFT, Winter & Holidays 1999 "specialties for Enjoying Wild Birds" Penacook, NH, pgs 1-48 in view U.S. Patent No. 5,452,682 to Bescherer et al as applied to claim 1 and 9-11 above, and further in view of U.S. Patent No. 5,558,040 to Colwell et al.

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Regarding Claims 27, 32-36, 39, 49, DUNCRAFT as modified is silent on a clamp separate from said hanger disposed between said cover and cap to prevent removal of said cover and the clamp comprising an annular member that is secured about the seed holder cylindrical housing. However, Colwell teaches a clamp with an annular member for preventing the removal of a cover on a seed holder (Colwell #85 and 81) placed about the top/cover along a central vertical member. It would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT with the teachings of Colwell at the time of the invention to control vertical displacement of the cover as taught by Colwell and for a structurally secure assembly in high winds to prevent vertical displacement along the length of the seed holder. DUNCRAFT as modified by Colwell inherently locates the clamp secured to the seed hold cylindrical housing, this modification is merely the substitution of an alternate equivalent central vertical member taught by Colwell performing the same intended function. Merely shifting the location along the length of a vertical member does not present a patentably distinct limitation since the component is still performing the same intended function [In re Japikse, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Regarding Claim 41, DUNCRAFT as modified teaches the clamp comprises a spring claim (Colwell #85 and Fig. 8).

Regarding Claim 42, DUNCRAFT as modified teaches the clamp comprises a rib formed in the outer surface (Colwell #85 the clamp itself is the rib).

Regarding Claim 43, DUNCRAFT as modified is silent on the rib being an annular rib integrally formed with the seed holder. However, it would have been

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obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely make a known element integral as an engineering manufacturing design choice to prevent the consumer from loosing pieces to the assembly and does not present a patentably distinct limitation [*In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349 (CCPA 1965)].

Regarding Claim 44, DUNCRAFT as modified is silent on a wing nut clamp as another possible embodiment for the design. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely the selection of an alternate old and notoriously well-known fastening means performing the same intended function for prevent vertical displacement, selected merely as an engineering manufacturing design choice to provide more ergonomic ease of assembly for the elderly.

Regarding Claim 45, DUNCRAFT as modified is silent on the annular rib on the seed holder being below the cover. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely shifting the location of a known element (Colwell #85) to prevent vertical displacement downward when a large load rests on the top.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 2-5, 7-12, 14-23, 26, 27, 32-36, 39-49 have been considered but are moot in view of the new ground(s) of rejection.



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Examiner maintains that it would have been obvious to one of ordinary skill in the art to modify the teachings of DUNCRAFT with the teachings of Colwell at the time of the invention. DUNCRAFT teaches the structural features of the selective bird feeder including a dome top and a cap on the seed holder extending through an aperture in the dome top. DUNCRAFT is merely silent on a clamp. Colwell teaches a bird feeder and the general knowledge of one of ordinary skill in the art that clamps can be used to control vertical displacement of the dome top and various components positioned along the length of **the central vertical member** (Colwell #85 and 83). In this instance, the seed holder of DUNCRAFT is merely the **alternate central vertical member**. It is general knowledge that one of ordinary skill in the art would place the clamp taught by Colwell at any desired location along the length of the vertical central member of DUNCRAFT to prevent undesired displacement of the components. The clamp of Colwell used to modify the teachings of DUNCRAFT is being utilized to perform the same intended function controlling the length of displacement of a bird feeder dome top along a length of a central vertical member.

### ***Conclusion***

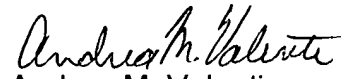
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,539,892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Andrea M. Valenti  
Primary Examiner  
Art Unit 3643

22 August 2006